

AMENDED IN SENATE AUGUST 14, 2002

AMENDED IN ASSEMBLY MAY 28, 2002

AMENDED IN ASSEMBLY MAY 15, 2002

AMENDED IN ASSEMBLY APRIL 17, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2504

Introduced by Assembly Member Jackson

February 21, 2002

An act to amend Sections 170.1 and 1281.9 of the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 2504, as amended, Jackson. Judges: arbitration.

Existing law sets forth the grounds for the required disqualification of a judge, as specified.

This bill would require the disqualification of a judge who *has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral, as defined, or is engaged participating in, or, within the last two years, has engaged or participated in, discussions or negotiations within the past 2 years regarding, or currently has, any arrangement concerning such prospective employment or other compensated service as an arbitrator, mediator, temporary judge, referee, special master, neutral evaluator, settlement officer, or settlement facilitator, as specified, if the person or entity with whom the judge had discussions or negotiations, or the prospective employer or other source of compensated service, is a party*

~~to the proceeding, as defined, and the matter before the judge includes issues relating to arbitration or mediation, or the use of such a temporary judge, referee, special master, neutral evaluator, settlement officer, or settlement facilitator, and further, specified conditions apply.~~

Existing law requires a proposed neutral arbitrator in an arbitration pursuant to an arbitration agreement to disclose, among other things, the existence of grounds for the required disqualification of a judge.

~~This bill would exempt the basis for disqualification added by the bill from this disclosure requirement~~ *require disclosure of whether or not an arrangement or discussion described above applies.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 170.1 of the Code of Civil Procedure is
2 amended to read:

3 170.1. (a) A judge shall be disqualified if any one or more of
4 the following is true:

5 (1) The judge has personal knowledge of disputed evidentiary
6 facts concerning the proceeding.

7 A judge shall be deemed to have personal knowledge within the
8 meaning of this paragraph if the judge, or the spouse of the judge,
9 or a person within the third degree of relationship to either of them,
10 or the spouse of such a person is to the judge's knowledge likely
11 to be a material witness in the proceeding.

12 (2) The judge served as a lawyer in the proceeding, or in any
13 other proceeding involving the same issues he or she served as a
14 lawyer for any party in the present proceeding or gave advice to
15 any party in the present proceeding upon any matter involved in
16 the action or proceeding.

17 A judge shall be deemed to have served as a lawyer in the
18 proceeding if within the past two years:

19 (A) A party to the proceeding or an officer, director, or trustee
20 of a party was a client of the judge when the judge was in the
21 private practice of law or a client of a lawyer with whom the judge
22 was associated in the private practice of law; or

23 (B) A lawyer in the proceeding was associated in the private
24 practice of law with the judge.



1 A judge who served as a lawyer for or officer of a public agency
2 which is a party to the proceeding shall be deemed to have served
3 as a lawyer in the proceeding if he or she personally advised or in
4 any way represented the public agency concerning the factual or
5 legal issues in the proceeding.

6 (3) The judge has a financial interest in the subject matter in a
7 proceeding or in a party to the proceeding.

8 A judge shall be deemed to have a financial interest within the
9 meaning of this paragraph if:

10 (A) A spouse or minor child living in the household has a
11 financial interest; or

12 (B) The judge or the spouse of the judge is a fiduciary who has
13 a financial interest.

14 A judge has a duty to make reasonable efforts to inform himself
15 or herself about his or her personal and fiduciary interests and
16 those of his or her spouse and the personal financial interests of
17 children living in the household.

18 (4) The judge, or the spouse of the judge, or a person within the
19 third degree of relationship to either of them, or the spouse of such
20 a person is a party to the proceeding or an officer, director, or
21 trustee of a party.

22 (5) A lawyer or a spouse of a lawyer in the proceeding is the
23 spouse, former spouse, child, sibling, or parent of the judge or the
24 judge's spouse or if such a person is associated in the private
25 practice of law with a lawyer in the proceeding.

26 (6) For any reason (A) the judge believes his or her recusal
27 would further the interests of justice, (B) the judge believes there
28 is a substantial doubt as to his or her capacity to be impartial, or
29 (C) a person aware of the facts might reasonably entertain a doubt
30 that the judge would be able to be impartial. Bias or prejudice
31 towards a lawyer in the proceeding may be grounds for
32 disqualification.

33 (7) By reason of permanent or temporary physical impairment,
34 the judge is unable to properly perceive the evidence or is unable
35 to properly conduct the proceeding.

36 ~~(8) The judge is engaged in, has participated in discussions or~~
37 ~~negotiations within the past two years regarding, or currently has,~~
38 ~~any arrangement concerning prospective employment or other~~
39 ~~compensated service as an arbitrator, mediator, temporary judge~~
40 ~~appointed under Section 21 of Article VI of the California~~

~~Constitution, referee appointed under Section 638 or 639, special master, neutral evaluator, settlement officer, or settlement facilitator, if the person or entity with whom the judge had discussions or negotiations, or the prospective employer or other source of compensated service, is a party to the proceeding and the matter before the judge includes issues relating to arbitration or mediation, or the use of such a temporary judge, referee, special master, neutral evaluator, settlement officer, or settlement facilitator.~~

~~For purposes of this subdivision, “party” includes any entity that is the parent, subsidiary, or other legal affiliate of any party, and that is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.~~

(8) The judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding such prospective employment or service, and either of the following applies:

(A) The arrangement is, or the discussion was, with a party to the proceeding.

(B) The matter before the judge includes issues relating to the enforcement of an agreement to submit a dispute to alternative dispute resolution or the appointment or use of a dispute resolution neutral.

For purposes of this paragraph, “party” includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of this paragraph, a “dispute resolution neutral” means an arbitrator, mediator, temporary judge appointed under Section 21 of Article VI of the California Constitution, referee appointed under Section 638 or 639, special master, neutral evaluator, settlement officer, or settlement facilitator.

(b) A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding.

(c) At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other

1 than the judge whose judgment or order was reviewed by the
2 appellate court.

3 SEC. 2. Section 1281.9 of the Code of Civil Procedure is
4 amended to read:

5 1281.9. (a) In any arbitration pursuant to an arbitration
6 agreement, when a person is to serve as a neutral arbitrator, the
7 proposed neutral arbitrator shall disclose all matters that could
8 cause a person aware of the facts to reasonably entertain a doubt
9 that the proposed neutral arbitrator would be able to be impartial,
10 including all of the following:

11 (1) The existence of any ground specified in Section 170.1 for
12 ~~disqualification of a judge, other than a ground specified in~~
13 ~~paragraph (8) of subdivision (a) of Section 170.1.~~ *disqualification*
14 *of a judge. For purposes of paragraph (8) of subdivision (a) of*
15 *Section 170.1, the proposed neutral arbitrator shall disclose*
16 *whether or not he or she has a current arrangement concerning*
17 *prospective employment or other compensated service as a dispute*
18 *resolution neutral or is participating in, or, within the last two*
19 *years, has participated in, discussions regarding such prospective*
20 *employment or service with a party to the proceeding.*

21 (2) Any matters required to be disclosed by the ethics standards
22 for neutral arbitrators adopted by the Judicial Council pursuant to
23 this chapter.

24 (3) The names of the parties to all prior or pending
25 noncollective bargaining cases in which the proposed neutral
26 arbitrator served or is serving as a party arbitrator for any party to
27 the arbitration proceeding or for a lawyer for a party and the results
28 of each case arbitrated to conclusion, including the date of the
29 arbitration award, identification of the prevailing party, the names
30 of the parties' attorneys and the amount of monetary damages
31 awarded, if any. In order to preserve confidentiality, it shall be
32 sufficient to give the name of any party who is not a party to the
33 pending arbitration as "claimant" or "respondent" if the party is
34 an individual and not a business or corporate entity.

35 (4) The names of the parties to all prior or pending
36 noncollective bargaining cases involving any party to the
37 arbitration or lawyer for a party for which the proposed neutral
38 arbitrator served or is serving as neutral arbitrator, and the results
39 of each case arbitrated to conclusion, including the date of the
40 arbitration award, identification of the prevailing party, the names

1 of the parties' attorneys and the amount of monetary damages
2 awarded, if any. In order to preserve confidentiality, it shall be
3 sufficient to give the name of any party not a party to the pending
4 arbitration as "claimant" or "respondent" if the party is an
5 individual and not a business or corporate entity.

6 (5) Any attorney-client relationship the proposed neutral
7 arbitrator has or had with any party or lawyer for a party to the
8 arbitration proceeding.

9 (6) Any professional or significant personal relationship the
10 proposed neutral arbitrator or his or her spouse or minor child
11 living in the household has or has had with any party to the
12 arbitration proceeding or lawyer for a party.

13 (b) Subject only to the disclosure requirements of law, the
14 proposed neutral arbitrator shall disclose all matters required to be
15 disclosed pursuant to this section to all parties in writing within 10
16 calendar days of service of notice of the proposed nomination or
17 appointment.

18 (c) For purposes of this section, "lawyer for a party" includes
19 any lawyer or law firm currently associated in the practice of law
20 with the lawyer hired to represent a party.

21 (d) For purposes of this section, "prior cases" means
22 noncollective bargaining cases in which an arbitration award was
23 rendered within five years prior to the date of the proposed
24 nomination or appointment.

25 (e) For purposes of this section, "any arbitration" does not
26 include an arbitration conducted pursuant to the terms of a public
27 or private sector collective bargaining agreement.

